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JCS

13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 SIERRA FOREST LEGACY, SIERRA CLUB,
 16 EARTH ISLAND INSTITUTE, and CALIFORNIA
 17 NATIVE PLANT SOCIETY, non-profit
 organizations,

) Case No:
 BC 07

2646

) ADMINISTRATIVE MOTION TO
 18 Plaintiffs,) CONSIDER WHETHER CASES SHOULD
 19 v.) BE RELATED

20 BERNARD WEINGARDT, in his official capacity
 21 as Regional Forester, Region 5, United States Forest
 Service, EDWARD COLE, in his official capacity as
 22 Forest Supervisor, Sierra National Forest, United
 States Forest Service, ABIGAIL R. KIMBELL, in
 her official capacity as Chief of the United States
 23 Forest Service, and UNITED STATES FOREST
 SERVICE, an agency of the United States
 24 Department of Agriculture,

)

25 Defendants.

)

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 NORTHERN DISTRICT OF CALIFORNIA

INTRODUCTION

Pursuant to Civil Local Rule 3-12, plaintiffs Sierra Forest Legacy, *et al.* notify the Court and parties that the instant case is related to an earlier action on file in this Court and decided by the Hon. Charles R. Breyer: *Sierra Club, et. al. v. Bosworth, et al.*, No. C 05-00397 CRB (N.D. Cal. Aug. 25, 2006) ("*Sierra Club v. Bosworth*"). Because these two cases concern substantially the same parties, property, and events, including many common facts and questions of law, plaintiffs submit that the cases are related within the meaning of Civil Local Rule 3-12 and that assignment of the instant case to Judge Breyer would result in a substantial savings of judicial effort and avoid conflicting results.

STATEMENT OF THE RELATIONSHIP OF THE ACTIONS**I. Both Actions Concern Substantially the Same Parties.**

In the instant case, plaintiffs Sierra Forest Legacy, Sierra Club, Earth Island Institute, and the California Native Plant Society challenge the approval of the Kings River Project ("Project") by the United States Forest Service ('Forest Service") and its responsible officials. The previous action, *Sierra Club v. Bosworth*, was also brought by plaintiffs Sierra Forest Legacy (then known as the Sierra Nevada Forest Protection Campaign), Sierra Club, Earth Island Institute, and others against the Forest Service and its responsible officials for approval of the Giant Sequoia National Monument Management Plan ("Monument Plan").

II. Both Actions Concern Substantially the Same Property.

In the instant action, plaintiffs filed suit against the Kings River Project, a massive program of logging, herbicide treatments, and prescribed fire on 131,500 acres of Sierra National Forest in the southern Sierra Nevada. In *Sierra Club v. Bosworth*, plaintiffs challenged the Forest Service's approval of the Giant Sequoia National Monument Management Plan, which authorized large-scale logging on 328,000 acres of Monument lands established within Sequoia National Forest and immediately adjacent to Sierra National Forest in the southern Sierra Nevada. Plaintiffs in both actions are particularly concerned about adverse impacts of the proposed activities on the endangered Pacific fisher, a forest carnivore that inhabits dense, old forest habitat in the southern Sierra Nevada. Both the Kings River Project and the Giant Sequoia National Monument are located

1 within the Southern Sierra Nevada Fisher Conservation Area, a region of Sierra and Sequoia
 2 National Forests designated for protection by the Forest Service in 2001.

3 **III. Both Actions Concern Substantially the Same Events.**

4 In the instant case, plaintiffs allege that the Forest Service's approval of the Kings River
 5 Project violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, by
 6 failing to provide adequate information or analysis regarding the Project's likely environmental
 7 impacts on the Pacific fisher and other old forest species and on wildfire risk. Plaintiffs further
 8 allege that the Forest Service violated NEPA by failing to adequately respond to scientific
 9 information and public comments with respect to the fisher and other species. In addition, plaintiffs
 10 contend that the Forest Service violated the National Forest Management Act ("NFMA"), 16 U.S.C.
 11 § 1604, by failing to insure the viability and distribution of the Pacific fisher, and by failing to gather
 12 and disclose legally required monitoring data for numerous at-risk species.

13 In *Sierra Club v. Bosworth*, plaintiffs alleged that the Forest Service violated NEPA in its
 14 approval of the Giant Sequoia National Monument Management Plan by failing to adequately
 15 consider impacts on the fisher and other old forest species and on wildfire risk, and by failing to
 16 meaningfully analyze or respond to scientific information and opposition with respect to the fisher.
 17 In addition, plaintiffs in *Sierra Club v. Bosworth* challenged the Forest Service's implementation of
 18 four specific timber sales located in and around the Monument based on significant new information
 19 regarding the imperiled status of and habitat requirements for the fisher, which mandated a
 20 supplemental NEPA analysis.¹

21
 22
 23¹ In an Order dated March 9, 2005, *Sierra Club v. Bosworth* was related to *People of the State of*
 24 *California, ex rel. Bill Lockyer v. United States Forest Service, et al.*, No. C 05-00898 CRB
 25 ("*California v. Forest Service*") and *People of the State of California v. United States Forest Service*,
 26 No. C 04-02588 CRB ("*California v. Forest Service II*"). In *California v. Forest Service*, the State
 27 of California filed suit against the Forest Service's approval of the Giant Sequoia National
 28 Monument Management Plan, alleging, among other things, that the agency violated NEPA by
 failing to adequately analyze impacts to the Pacific fisher. In *California v. Forest Service II*, the
 State of California challenged the lack of NEPA analysis undertaken by the Forest Service in its
 approval of the Sequoia National Forest Fire Plan. All of these cases were assigned for all purposes
 to Judge Breyer.

1 In 2005, Judge Breyer found that the Forest Service had failed to conduct a proper NEPA
2 analysis regarding two of the timber sales located in and around the Monument, and preliminarily
3 enjoined the proposed logging. *Sierra Club v. Bosworth*, No. C 05-00397 CRB (N.D. Cal. Sept. 9,
4 2005); *Sierra Club v. Bosworth*, No. C 05-00397 CRB (N.D. Cal. Nov. 11, 2005). On August 25,
5 2006, Judge Breyer held that the Monument Plan violated NEPA in all respects alleged by plaintiffs
6 and the State of California, and permanently enjoined the four specific timber sales due to the Forest
7 Service's failure to adequately consider impacts on the fisher. *Sierra Club v. Bosworth*, No. C 05-
8 00397 CRB (N.D. Cal. Aug. 25, 2006); *California v. Forest Service*, No. C 05-00898 CRB (N.D.
9 Cal. Aug. 25, 2006).

10 In sum, the cases above share substantially the same parties, property, and events. Sierra
11 Forest Legacy, Sierra Club, and Earth Island Institute are plaintiffs in both the instant case and in
12 *Sierra Club v. Bosworth*. The Forest Service and Forest Service officials are defendants in both
13 actions. In addition, both cases allege that the Forest Service violated NEPA in approving and
14 implementing logging projects and other activities in key habitat for the imperiled Pacific fisher in
15 the southern Sierra Nevada.

16 **IV. Assignment to the Same Judge Will Avoid Unduly Burdensome Duplication of Labor
17 and Expense and Will Avoid Conflicting Results.**

18 The instant case and *Sierra Club v. Bosworth* involve many of the same facts and questions
19 of law such that their assignment to the same Judge is likely to conserve significant judicial
20 resources and prevent an unduly burdensome duplication of labor. Both cases are consecutive
21 chapters in the management of southern Sierra Nevada National Forests and involve the Forest
22 Service's approval of logging and other activities in the southern Sierra Nevada, and therefore share
23 much of the same regulatory history. Moreover, many scientific facts regarding the biology of the
24 Pacific fisher and other old forest species, as well as scientific research and information regarding
25 fire ecology, are common to these actions. In fact, leading scientific experts on the Pacific fisher and
26 wildfire behavior in the southern Sierra Nevada testified before Judge Breyer and submitted
27 declarations during the proceedings in *Sierra Club v. Bosworth*.

In addition, both cases share common questions of law regarding the requirements of NEPA in the Forest Service’s management of lands in the southern Sierra Nevada. In *Sierra Club v. Bosworth*, the Court resolved whether the Forest Service had adequately analyzed the impacts to old forest species and wildfire risk from the logging proposed by the Monument Plan and specific timber sales. In the instant case, the Court must determine whether the Forest Service provided adequate information or analysis regarding the impacts on old forest species and wildfire risk from the Kings River Project. Moreover, the cases involve common questions of law regarding the Forest Service’s duty to ensure the scientific integrity of its analysis and to meaningfully respond to scientific information and opposition on these issues. Finally, both cases potentially raise similar legal questions regarding the appropriate remedy in cases where the Forest Service is found to have approved a logging project in violation of the law.

CONCLUSION

13 Because these cases concern substantially the same parties, property, and events, plaintiffs
14 respectfully submit that the instant action is related to *Sierra Club v. Bosworth*, and, in order to
15 promote judicial economy and avoid the possibility of conflicting results, should be reassigned to the
16 Hon. Charles R. Breyer.

18 | DATED: May 18, 2007

Respectfully submitted,


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Attorneys for Plaintiffs Sierra Forest Legacy,
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/s/ Rachel Fazio (as authorized May 18, 2007)
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PROOF OF SERVICE

I am a citizen of the United States of America and a resident of the City and County of San Francisco; I am over the age of 18 years and not a party to the within entitled action; my business address is 426 17th Street, 5th Floor, Oakland, California.

I hereby certify that on May 18, 2007, I served by U.S. first class mail one true copy of the foregoing document on the parties in each potentially related action, as follows:

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I certify under penalty of perjury that the foregoing is true and correct. Executed on May 18, 2007, in Oakland, California.


John W. Wall